

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8310 of 2019

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Janki Singh, Son of late Cepoy Singh @ Sipahi Singh, Resident of Village
and P.O. Girahar Varab, P.S.- Nawanagar, District- Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Inspector General (Jail), Government of Bihar, Patna.
3. The Joint Secretary cum Director (Administration) Home (Prison)
Department, Bihar, Patna.
4. The Jail Superintendent, District Jail, Purnea, at present Central Jail, Purnea.
5. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rudal Singh

For the Respondent/s : Mr. Md.Nadim Seraj (GP5)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 21-06-2019

1. Heard the learned counsel for the petitioner and
the State.

2. The petitioner, a retired Jail employee, seeks a
direction to the respondents to make available to him the
salary to which he was entitled from 05.04.2010 to
10.11.2011 and 10.11.2011 to 31.12.2012.



3. The petitioner, while discharging his duties as a Warder in Shahid Zubba Sahni Central Jail, was charged with observing laxity in matter of ensuring safety of the prisoners. A prisoner had escaped from Shahid Zubba Sahni Central Jail which led to a preliminary enquiry and consequent submission of report against the petitioner. The petitioner along with others was subjected to a departmental proceeding and an order of dismissal was passed as against him.

4. The petitioner had challenged the aforesaid order of dismissal before this Court vide C.W.J.C. No. 4612 of 2012. A Bench of this Court, after having found that the order of dismissal was only based on the preliminary enquiry report and without taking evidence from any one of the witnesses and concluding the proceeding behind the back of the petitioner, set aside the order of dismissal of the petitioner. The State preferred an appeal against the aforesaid order with the sole plea that if the order of punishment was set aside on the ground of non-observance of the provision of Section 17(14) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, the learned Single Judge ought to have



remitted the matter to the disciplinary authority for passing a fresh order in accordance with law after recording evidence. The LPA Court vide order dated 03.10.2017 agreed with the aforesaid submission of the State and held that it would be open for the employer / respondents to subject the petitioner to any further proceeding. However, in the same breath, the Division Bench clarified that the order of the learned Single Judge had to be implemented first, meaning thereby that the stigma of dismissal had to be removed straightway.

5. Pursuant to the aforesaid order of setting aside of the dismissal order of the petitioner, he was made to join the service as a Warder and after attaining the age of superannuation, he demitted his office. All other benefits which had accrued to the petitioner were paid to him except the salary for the period of his suspension and till the time the order of dismissal was set aside i.e. 05.04.2010 to 10.11.2011 and 10.11.2011 to 31.12.2012 respectively.

6. This is the basic grievance of the petitioner.

7. This Court has perused the orders passed by the learned Single Judge and the Division Bench in L.P.A. No.



1305 of 2012. Pursuant to the aforesaid two orders, no proceeding was initiated against the petitioner. The petitioner was made to join the service. He rendered his services with full satisfaction of his employer. After his retirement, his post-retiral dues have been paid to him except the salary for the period of suspension and for the period his services were not resumed. Though, technically, a person need not be paid for the period that he has not worked for, nonetheless a decision has been taken by the employer in that regard.

8. The petitioner could not be left in the lurch with respect to his entitlement for the payment of salary for the period that would be deemed to be in service. The order of dismissal was set aside by the learned Single Judge without any stipulation with respect to the payment of salary for the period that the petitioner remained under suspension. The operative portion of the order only states that the punishment order as well as appellate order is set aside. With respect to another employee of the Central Jail, who too was subjected to departmental proceeding, an order of recovery was made by



the disciplinary authority which recovery was also directed to be refunded forthwith by the learned Single Judge.

9. This, therefore, presupposes that the learned Single Judge had disclosed his mind that the order of dismissal was absolutely bad in the eyes of law not only with respect to the petitioner but with respect to others as well. The order passed by the Division Bench in L.P.A. No. 1305 of 2012 also clearly states that even though the Division Bench was of the view that the enquiry in question having been quashed on technical ground, liberty was required to be given to the department to proceed in the matter in accordance with law but before doing so, the order of the writ Court had to be implemented in its true letter and spirit. In the absence of any stipulation in that regard, it was incumbent upon the employer / respondents to have paid to the petitioner the salary for the period 05.04.2010 to 10.11.2011 and 10.11.2011 to 31.12.2012.

10. The petitioner, therefore, is directed to make a representation ventilating his grievance and enclosing a copy of this Court before the IG (Prison), Government of Bihar, Patna



within a period of four weeks, who on receipt of the same shall pass necessary orders in accordance with law within a further period of four weeks thereafter. The claim of the petitioner, if found to be tenable, necessary / sequel orders shall be passed by the concerned authority forthwith.

11. With the aforesaid observation / direction, this petition stands allowed / disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	24.06.2019
Transmission Date	

